FORM NLRB-5026
(1-87)

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UNITED STATES GOVERNMENT
National Labor Relations Board

05237

Memorandum

DATE: May 27, 1988

RELEASE

TO : Gerald P. Fleischut, Regional Director
Region 26

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: 578-6065
578-4025-0100
590-0150
Local No. 10, Heat/Frost Insulators and Asbestos Workers
(J. Graves Insulation Co., Inc.)
Case No. 26-CP-85

This case was submitted for advice pursuant to General Counsel Memorandum 87-2 on the issue of whether, under John Deklewa & Sons, 282 NLRB No. 184 (1987), the Union violated Section 8(b)(7)(C) by picketing the Employer after expiration of their Section 8(f) collective-bargaining agreement.

FACTS

J. Graves Insulation Co., Inc. (Employer) and Local No. 10 of the International Association of Heat and Frost Insulators and Asbestos Workers (Union) were parties to a collective-bargaining agreement that expired March 31, 1988. 1/ The agreement, which had no automatic renewal clause, was extended by the parties to April 30. In mid-March 1988, the parties began bargaining for a new agreement. At first, the Union requested a clause which would require the Employer to recognize the Union as the majority representative. The Employer rejected this proposal and stated that it would continue the relationship only as a Section 8(f) relationship. Later in the bargaining, the Union dropped its demand for majority status recognition.

On April 30, the Union rejected the Employer's final offer and struck. On May 3, the Employer began to hire permanent replacements. On May 5, the Union asked the Employer if the Employer were willing to modify the last proposal. On May 6, the Employer responded by telephone that it had withdrawn its final offer and that it was no longer on the table. On May 12, the Employer told the Union by telephone that since the final offer had been rejected, it was no longer open. On May 13, the Employer sent a letter to the Union to confirm the May 12 conversation. The Union received the letter on May 16. In the letter the Employer stated that it was ceasing its relationship with the Union. Meanwhile, on May 15, the Union sent the

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1/ All dates hereafter are in 1988, unless otherwise indicated.

Employer a telegram in which it attempted to accept the Employer's final offer. The Union also made an unconditional offer to return to work on behalf of the striking employees. The Employer received this telegram on May 16. On May 19, the Union began to picket the Employer's offices and warehouse facilities. The pickets carried signs which read, "J. Graves - Unfair Labor Practices." Picketing continued on May 20 and May 23 at the Employer's business location.

ACTION

We conclude that complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(7)(C) of the Act by picketing the Employer after expiration of the Section 8(f) agreement.

First, it is clear that there is no contract between the parties. The Employer's offer had been withdrawn on May 12, and hence it could not be accepted on May 15.

Second, the Employer withdrew recognition on May 13, and the Union learned of this on May 16. From that point on, the dispute between the parties was a recognitional dispute, not a bargaining dispute. Hence, the picketing in support of that dispute was within the ambit of Section 8(b)(7).

The next issue is whether the Union was picketing for Section 8(f) recognition, as distinguished from Section 9 recognition. The difference is important because, as discussed infra, picketing for Section 9 recognition can normally continue for 30 days, whereas picketing for Section 8(f) recognition is unlawful from the first day. We conclude that the object of the Union's picketing is to force the Employer to restore a Section 8(f) relationship with the Union. In this regard, there is no evidence that the Union attempted to solicit employee authorization cards, the Union not did not file a petition with the Board, and the Union dropped its demand for Section 9 recognition. Therefore, we conclude that the Union seeks to reestablish a Section 8(f) relationship with the Employer.

We further conclude that the picketing for Section 8(f) recognition was unlawful from its inception. In this regard, we note that the Board said in Deklewa:

> Even absent an election, upon the contract's expiration, the signatory union will enjoy no

> majority presumption and either party may repudiate the 8(f) relationship. The signatory employer will be free, at all times, from any coercive union efforts, including strikes and picketing, to compel the negotiation and/or adoption of a successor agreement. 2/ (Emphasis supplied.)

The above language, in our view, strongly suggests that the Board intends to proscribe any and all picketing to compel adoption of an initial or successor 8(f) agreement, even if such picketing is for less than 30 days. Thus, in our view the Board will no longer follow Los Angeles Building & Construction Trades Council (Donald Schriver, Inc.), 3/ in which the Board held that a union may normally picket lawfully for 30 days to obtain a Section 8(f) contract.

Under this view of Deklewa, picketing in support of Section 8(f) recognition should not be permitted to continue for 30 days, whereas picketing in support of Section 9 recognition can usually continue for that length of time. In support of this distinction, we note that, in the Section 8(f) situation, the union seeks to become the representative without regard to the representational desires of the employees. Its picketing thus is designed to coerce the employer into recognizing the union. In the Section 9 situation, the union seeks the support of the unit employees and seeks to persuade a majority of them to select the union as their collective bargaining representative. Hence, the focus of the picketing is not only on the employer, but also on the employees. Thus, there is a strong public policy for giving the picketing union a full 30 days to communicate its message to the employees. That public policy does not operate in the 8(f) situation where the union is not seeking to persuade employees, but simply to coerce the employer. In addition, in the construction industry, time is generally of the essence, and picketing can have a very disruptive effect on the progress of the construction. Hence, unlike the situation of a permanent industrial plant, 30 days of picketing may well be unreasonable. Therefore, because the picketing in the instant case has the object of coercing the Employer into a Section 8(f) collective-

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2/ Id., slip op. at 32.

3/ 239 NLRB 264, 269 (1978), enforcement denied, 635 F.2d 859 (D.C. Cir. 1980), cert. denied, 451 U.S. 976 (1981).

bargaining relationship, the Region should argue that the picketing was unlawful from its inception.

Finally, the Union argues that its picketing is lawful because it conforms to the publicity proviso of Section 8(b)(7)(C). However, the picketing does not meet the requisites of that proviso. Here, the language of the picket signs does not state that the Employer and the Union have no contract, and does not indicate that the Employer has failed to employ Union members. In these circumstances, the picketing does not meet the requirements of the proviso.

Accordingly, we conclude that the Union's picketing for the purpose of reestablishing a Section 8(f) relationship with the Employer violated Section 8(b)(7)(C) of the Act, and that complaint should issue, absent settlement.

H.J.P.:MF